

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PETER JOSHUA LABRECK,

Plaintiff,

Case No. 11-11328

v.

Hon. John Corbett O'Meara

PAUL ANTHONY ESPOSITO, *et al.*,

Defendants.

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**ORDER DENYING MOTION FOR  
RECONSIDERATION AND GRANTING  
ADDITIONAL TIME TO APPEAL**

Before the court is Plaintiff's motion to reconsider dismissal or to grant Plaintiff time to file appeal, dated January 16, 2014. Defendants filed a response on January 27, 2014.

On October 7, 2013, Magistrate Judge Mark A. Randon issued a report and recommendation recommending that Defendants' motion for summary judgment be granted. The magistrate judge found that Plaintiff's 42 U.S.C. § 1983 claims should be dismissed because Defendants are not state actors. Given that the federal claims were subject to dismissal, the magistrate judge also recommended that the court decline to exercise supplemental jurisdiction over Plaintiff's state claims.

The court agreed and issued an order adopting the report and recommendation on October 31, 2013. A judgment was entered on the same date.

The court has recently attempted to send orders and other items to Plaintiff, but the mail has been returned as undeliverable. See Docket Nos. 61, 62, 65. Plaintiff explains that he is incarcerated and was moved among four different facilities during the past sixty days. Plaintiff states that he has not received the court's order dismissing this action, but discovered that the case had been dismissed after a friend called the clerk's office.

Plaintiff requests that the court reconsider its dismissal or allow him additional time to file an appeal. The court finds that there is no basis for reconsideration. Plaintiff has not stated a federal claim and, under those circumstances, it is appropriate for the court to decline supplemental jurisdiction over Plaintiff's state claims. See Williams v. City of River Rouge, 909 F.2d 151, 157 (6<sup>th</sup> Cir. 1990) ("Where an action in federal court includes both federal and pendent state claims and the court dismisses the federal claims before trial on a motion for summary judgment, the pendent state claims are ordinarily dismissed as well.").

Plaintiff's request for additional time to file an appeal is governed by Federal Rule of Appellate Procedure 4(a)(6). See Bowles v. Russell, 432 F.3d 668,

672 (6<sup>th</sup> Cir. 2005).

**(6) Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6). The court finds that the conditions imposed by Rule 4(a)(6) are met here. Plaintiff did not receive notice of the judgment pursuant to Federal Rule of Civil Procedure 77(d); he filed his motion for additional time within 180 days of the judgment; and Defendants have not alleged that they would be prejudiced. The court will reopen the time for Plaintiff to appeal for fourteen days after entry of this order; it does not have discretion to allow additional time. See Fed. R. App. P. 4(a)(6); Bowles, 432 F.3d at 676. The court notes that it is Plaintiff's responsibility to keep court apprised of his current address and any future changes, by filing a Notice of Change of Address.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion is DENIED IN PART AND GRANTED IN PART, consistent with this opinion.

IT IS FURTHER ORDERED that Plaintiff shall have fourteen days from the date of this order to file his notice of appeal.

s/John Corbett O'Meara  
United States District Judge

Date: April 30, 2014

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, April 30, 2014, using the ECF system and/or ordinary mail.

s/William Barkholz  
Case Manager